

AMENDED IN SENATE APRIL 17, 2012

**SENATE BILL**

**No. 1248**

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**Introduced by Senator Alquist**

February 23, 2012

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An act to amend Section 1219.5 of the Code of Civil Procedure, relating to court proceedings.

LEGISLATIVE COUNSEL'S DIGEST

SB 1248, as amended, Alquist. Civil procedure: contempt.

Existing law requires courts to refer minors under 16 years of age who refuse to testify in a court proceeding to a probation officer, as specified, and to receive a recommendation and report from that probation officer, before imposing a sanction for contempt, except as specified.

This bill would require the court to require a victim of a sex crime who is subject to the above requirements to meet with a victim advocate, as defined. ~~The bill would require a victim advocate to provide the victim with an explanation of his or her rights, and prohibit any person from interfering with any meeting between the victim advocate and the victim.~~ The bill would also permit a court to impose sanctions, as specified, on any parent or guardian who the court finds is inappropriately interfering with court processes by encouraging the victim to refuse to testify.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1219.5 of the Code of Civil Procedure  
2 is amended to read:

3     1219.5. (a) Except as provided in subdivision (d), in any case  
4 in which a contempt consists of the refusal of a minor under 16  
5 years of age to take the oath or to testify, before imposing any  
6 sanction for the contempt, the court shall first refer the matter to  
7 the probation officer in charge of matters coming before the  
8 juvenile court for a report and recommendation as to the  
9 appropriateness of the imposition of a sanction. The probation  
10 officer shall prepare and file the report and recommendation within  
11 the time directed by the court. In making the report and  
12 recommendation, the probation officer shall consider factors such  
13 as the maturity of the minor, the reasons for the minor's refusal to  
14 take the oath or to testify, the probability that available sanctions  
15 will affect the decision of the minor not to take the oath or not to  
16 testify, the potential impact on the minor of his or her testimony,  
17 the potential impact on the pending litigation of the minor's  
18 unavailability as a witness, and the appropriateness of the various  
19 available sanctions in the minor's case. The court shall consider  
20 the report and recommendation in imposing a sanction in the case.

21     (b) (1) A victim of a sex crime who is subject to subdivision  
22 (a) shall meet with a victim advocate, as defined in Section 679.04  
23 of the Penal Code. ~~The victim advocate shall provide to the victim~~  
24 ~~an explanation of his or her legal rights. No person, including the~~  
25 ~~victim's attorney, shall interfere with any meeting between the~~  
26 ~~victim advocate and the victim.~~

27     ~~(2) If a judge imposes a sanction for contempt on a minor~~  
28 ~~described in paragraph (1), the sanction shall be counseling. The~~  
29 ~~court shall select a counselor with expertise in treating minors who~~  
30 ~~are victims of sex crimes. The victim shall meet with a counselor~~  
31 ~~at least twice a week, for four weeks.~~

32     ~~(3)~~  
33     (2) If the court finds that a parent or guardian is inappropriately  
34 interfering with court processes by encouraging a minor described  
35 in paragraph (1) to refuse to testify, the parent or guardian may be  
36 sanctioned. The sanction may include counseling, a fine, or jail  
37 time.

1 (c) In any case in which the court orders the minor to be placed  
2 outside of his or her home, the placement shall be in the least  
3 restrictive setting available. Except as provided in subdivision-~~(d)~~  
4 ~~(e)~~, the court shall not order the minor to be placed in a secure  
5 facility unless other placements have been made and the minor  
6 has fled the custody and control of the person under the control of  
7 whom he or she has been placed or has persistently refused to obey  
8 the reasonable and proper orders or directions of the person under  
9 the control of whom he or she has been placed.

10 (d) The court may impose a sanction for contempt prior to  
11 receipt of the report and recommendation required by subdivision  
12 (a) if the court enters a finding, supported by specific facts stated  
13 on the record, that the minor would be likely to flee if released  
14 before the receipt of the report and recommendation.

15 (e) The court may order the minor placed in a secure facility  
16 without first attempting the nonsecure placement required by  
17 subdivision-~~(b)~~ (c) if the court enters a finding, supported by  
18 specific facts stated on the record, that the minor would be likely  
19 to flee if released to nonsecure placement as a prerequisite to secure  
20 confinement.